Lee Chee Chen v Ayer Keroh Heights Sdn Bhd

HIGH COURT (MALACCA) — CIVIL SUIT NO 22-38-1986
MOKHTAR SIDIN JC
28 AUGUST 1990

Contract — Sale and purchase of land — Specific performance — Vendor under receivership — Whether remedy lies in damages for breach of contract

This is an application by the plaintiff for specific performance of the agreement dated 21 September 1978 pursuant to O 81 of the Rules of the High Court 1980. The defendant agreed to sell and the plaintiff agreed to purchase lot no 573, mukim of Bukit Katil, Malacca (hereinafter referred to as the 'said lot') together with a single-storey terrace low cost house (hereinafter referred to as the 'said building') to be erected by the defendant. By cl 20 of the said agreement, the defendant agreed to execute a valid and registrable transfer of the said lot and the said building to the plaintiff upon the issue of the document of title in respect of the said lot and upon the plaintiff having completed the payments of the purchase price. The plaintiff had completed the payments of the purchase price. The title of the said lot was issued by the Land Office to the defendant on 14 May 1979 but was charged to Bank Bumiputra. On the failure of the defendant to execute a valid and registrable title of the said lot and the said building, the plaintiff filed a writ of summons on 13 November 1986. Nothing was done to the said summons until 2 November 1989 when the plaintiff filed the present application by way of summons-in-chambers. By that date the defendant was already in a bad shape. By an order of the court dated 16 November 1988 the defendant was placed under receivership.

Held, allowing the plaintiff's application:
The appointment of a receiver does not of itself afford the vendor company a defence to a claim by the purchaser for specific performance of the contract to sell land, which gives the purchaser an equitable interest in the land. This interest is not destroyed by the fact that the vendor company is placed in receivership by a debenture holder prior to completion of the contract. The vendor company remains liable to complete the contract.

[Bahasa Malaysia summary

Ini adalah satu permohonan oleh plaintif untuk perlaksanaan spesifik persetujuan bertarikh 21 September 1978 mengikut A 81 Kaedah-Kaedah Mahkamah Tinggi 1980. Defendan telah bersetuju menjual dan plaintif telah bersetuju membeli lot no 573, mukim Bukit Katil, Melaka (selepas ini dirujuk sebagai 'lot itu') bersama dengan sebuah rumah teres setingkat kos rendah (selepas ini dirujuk sebagai 'bangunan itu') yang akan dibina oleh defendan. Mengikut fasal 20 persetujuan itu, defendan bersetuju membuat satu pemindahan yang sah dan boleh didaftar bagi lot itu dan bangunan itu kepada plaintif apabila dokumen hakmilik lot itu dikeluarkan dan apabila plaintif telah menyelesaikan bayaran pembelian itu. Plaintif telah beres membayar bayaran pembelian itu. Hakmilik lot itu telah dikeluarkan oleh Pejabat Tanah kepada defendan pada 14 Mei 1979 tetapi telah dicagar kepada Bank Bumiputra. Apabila defendan gagal membuat pemindahan yang sah dan boleh didaftar bagi lot itu dan bangunan itu, plaintif telah memfail satu writ saman pada 13 November 1986. Tiada apa-apa yang dibuat tentang saman itu hingga 2 November 1989 bila plaintif memfail permohanan ini melalui saman dalam kamar. Pada masa itu defendan telah menghadapi masalah kewangan. Mengikut satu perintah mahkamah bertarikh 16 November 1988, defendan telah diletakkan di bawah jawatan penerima.

Diputuskan, meluluskan permohan plaintif:
Perlantikan seorang penerima tidak dengan sendirinya memberikan syarikat yang menjual pembelaan terhadap dakwaan pembeli untuk perlaksanaan spesifik kontrak menjual tanah, yang memberikan pembeli kepentingan ekuiti ke atas tanah itu. Kepentingan itu tidak dimusnahkan akibat syarikat yang menjual diletakkan di bawah jawatan penerima oleh pemegang debentur sebelum selesainya perlaksanaan kontrak itu. Syarikat yang menjual masih kena menyelesaikan kontrak itu.]

Cases referred to

1 *Mohammad bin Baee* v *Pembangunan Farlim Sdn Bhd* [1988] 3 MLJ 211 (distd)
2 *Freevale Ltd* v *Metrostore (Holdings) Ltd & Anor* [1984] 1 All ER 495 (folld)

CK Lim for the plaintiff.
K Gomes for the defendant.

Cur Adv Vult

Mokhtar Sidin JC: This is an application by the plaintiff for specific performance of the agreement dated 21 September 1978 pursuant to O 81 of the Rules of the High Court 1980.

By the agreement dated 21 September 1978, the defendant, Ayer Keroh Heights Sdn Bhd agreed to sell and the plaintiff agreed to purchase lot no 573, mukim of Bukit Katil, Malacca (hereinafter referred to as the 'said lot') together with a single-storey terrace low cost house (hereinafter referred to as the 'said building') to be erected by the defendant. By cl 20 of the said agreement, the defendant agreed to execute a valid and registrable transfer of the said lot and the said building to the plaintiff upon the issue of the document of title in respect of the said lot and upon the plaintiff having completed the payments of the purchase price. The plaintiff had completed the payments of the purchase price. The title of the said lot was issued by the Land Office to the defendant on 14 May 1979 but it was charged to Bank Bumiputra. On the failure of the defendant to execute a valid and registrable title of the said lot and the said building, the plaintiff filed a writ of summons on 13 November 1986. Nothing was done to the said summons until 2 November 1989 when the plaintiff filed the present application by way of summons-in-chambers. By that date the defendant was already in a bad shape. By an order of the court dated 16 November 1988, the defendant was placed under receivership.

According to the receiver's report on 15 November 1989 the estimated deficiency (which amount was owing to secured and unsecured creditors) was $25,000,000 and the estimated total assets of the defendant was valued at $3,598,326. It was stated in the affidavit of

one of the receivers that the financial situation of the defendant at the present stage does not render it possible for the receivers to redeem any of the lands charged by the defendant to the bank. As such it was contended by the defendant that the principle of the case of *Mohammad bin Baee* v *Pembangunan Farlim Sdn Bhd*[1] applied, where it was held that the remedy lies in damages for breach of contract and not a proper case for granting specific performance.

In my view that case is easily distinguishable from the present case. In that case the house was only 75% completed. The defendant had a long history of financial problems and was placed under receivership by the debenture holder. The defendant was unable to complete the construction of the uncompleted units in the housing estate without further financial assistance. In the present case the building of the house had been completed and separate title for the said house had been issued by the Land Office on 14 May 1979. As such the only thing left to be done was to transfer the said title to the plaintiff. There is no doubt that the title was charged to the bank by the defendant but the plaintiff had paid the purchase price in full to the defendant. In my view it is the duty of the receivers who had taken the management of the defendant to find ways and means to redeem the title from the bank.

In my view the principle enunciated in the case of *Freevale Ltd* v *Metrostore (Holdings) Ltd & Anor*[2] applied in the present case. It was held in that case that:

> Where a limited company enters into a contract to sell land, thereby conferring on the purchaser an equitable interest in the land, the fact that the vendor company is placed in receivership by a debenture holder of the company prior to a completion of the contract does not destroy the purchaser's equitable interest in the land under the contract and substitute for it a mere right to claim damages against the vendor company if the contract is not completed, instead the vendor company remains liable to complete the contract. Accordingly, this appointment of a receiver does not itself afford the vendor company a defence to a claim by the purchaser for specific performance of the contract.

As such I will allow the plaintiff's application for specific performance with costs.

Application allowed.

Solicitors: *Taye & Co; Nordin Hamid & Co.*

Reported by *Kevin Mathews*